

**TOQUERVILLE CITY**  
**APPEAL AUTHORITY**  
**BOARD OF ADJUSTMENTS MINUTES AND FINDINGS**  
6:00pm Work Meeting, 7:00pm Regular Meeting  
Thursday, January 22, 2015  
Held at 212 N. Toquerville Blvd, Toquerville Utah

**ATTENDANCE:** Board of Adjustments: Chair Joseph Elison, Gary Lunt, Mona Lowe, D.C. Young, and Leah Matheson, Attorney Heath Snow, Recorder Renee Garner, Others: Lee Ballard, Mark Hawley, Chrisann Hawley, Jake Peart, and Cody Andrew.

**6:00 PM – CHAIR JOSEPH ELISON CONVENED THE WORK MEETING:**

Attorney Heath Snow began by explaining the purpose of a variance as an avenue for receiving an exception to the written code. The appeals authority or Board of Adjustments is the only body capable of granting a variance in the City.

The Hawleys, at 979 S Toquerville Blvd, had been refused a building permit by the Zoning and Building Departments on the grounds that their flag lot did not have a wide enough access road for the current code. Flag lots do not have the required 80' foot frontage so they must have an adequate access road or staff to the flag lot. This lot had a trailer on it at one time. The Hawleys built a garage that they could dwell in with plumbing and a kitchen and removed the trailer when they put down a slab to build a house in 2007. At that time they did receive a building permit from the City to build the house, but the permit became void after one year of no work.

Heath used the Land Management Code's (LMC) definitions Appendix B page 7 for a flag lot which states that the staff must be at least 20' feet wide at all points. This lot meets the size requirements for the agricultural zoning it is in. Their access is 12' feet wide. That was the previous requirement when the lot was originally approved.

Heath said that the applicant for a variance has the burden of proof to show why they should be an exception and what they believe the intent of the law to be.

Heath listed the five points for standard of review to determine the validity of a variance claim, strongly stating that all of these standards must be met. They are:

1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances,
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone,
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone,
4. The variance will not substantially affect the general plan and will not be contrary to the public interest, and
5. The spirit of the land use ordinance is observed and substantial justice done.

Heath felt that points three and five were subjective in that they spoke to having the same rights as the neighborhood and what the spirit of the law might be. He stated that the Board's job was to determine if the strict reading of the code creates an unreasonable hardship, if there are special circumstances that aren't a general problem for others in the neighborhood, and if giving an exception would not substantially affect the general plan or cause too much of a problem for others.

Heath opined that the applicant did a good job using the City code to make their argument in the letter they sent to the City.

He felt that we don't know the intent of the change from 12' to 20' in the code. He said that an access road or private drive is different than a driveway and imagined that the 20' feet might have been agreed upon to allow two cars to pass each other on the drive. He reiterated that it's not the Board's job to interpret the intent of the code; the burden of proof is on the applicant.

Heath went over the procedure for the meeting, to listen to the applicant and ask any questions, then to go into an executive session to discuss, then to come back into the regular meeting and give the applicant the finding.

**7:00 PM – CHAIR JOSEPH ELISON CONVENED THE MEETING:** 1. Board Member Gary Lunt offered the Pledge of Allegiance and the Invocation. 2. Chair asked for any statements of belief. None were given. 3. Chair called for disclosures or declarations of conflict from the Board on the Agenda item. None were given

**A. PRESENTATION:** Chair Joseph Elison asked for the applicant's argument. Chrisann Hawley addressed the board; and distributed hand-outs providing addresses of other properties in the City that have narrow staffs, aerial photos of the Hawley property and photos showing the garage, shed and slab.

Chair Elison asked if there was currently a structural residence on the property.

Chrisann said that the garage has a bathroom and kitchen area and that's where they stay.

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Chrisann spoke to the history of the property, their improvement to it over 24 years. She explained that in 2007 after the building permit was issued, Mark became ill and they sold the property and carried the contract. In 2013 the property came back into their hands and they've been trying to sell it ever since. Chrisann informed us that they now have an eager buyer and they need the variance for this buyer to be allowed to build. She stated the property has not been abandoned at any time, she argued that the City has allowed the property to be created, sold, and permitted for a building permit twice in the past. She pointed out that the width of the street was legal when created; the property has paid all the impacts and has water, sewer and electricity to it.

She quoted Craig Call, former State property rights ombudsman in saying that if the use was non-conforming then it may continue .... If a vacant residential lot was legally created in the first place, building permits should be allowed even if the lot could not be created under current ordinance as long as the use of the lot does not create a significant threat to health and safety.

She thanked the Board for listening and argued that her petition meets all the criteria for variance.

**EXECUTIVE MEETING:**

The Chair called for a motion to go into an executive meeting to deliberate.

**Motion** by DC Young to go into an executive meeting was second by Leah Matheson. Chair called for a vote. The motion passed unanimously and the public was excused.

Chair called for a motion to end the executive meeting.

**Motion** by Mona Lowe to end the executive meeting was second by Gary Lunt. Chair called for a vote. The motion was passed unanimously and the public was invited back into the meeting.

**B. BUSINESS:**

1. Review and possible approval to allow the Hawleys to build a new home at 979 S Toquerville Blvd, Property Tax ID# T-127-B-2, Mark & Chrisann Hawley.

Chair called for a motion.

**Motion:** DC Young moved to grant variance for the width of the road because the request meets the five criteria necessary for approval to allow that 12' feet is sufficient in this case and on the Hawleys property at 979 S Toquerville Blvd, Property Tax ID# T-127-B-2, Mark & Chrisann Hawley: the literal enforcement of code causes an unreasonable hardship that is not necessary to carry out the general purpose of the land use ordinances, there are special circumstances attached to the property that don't generally apply to other properties in the same zone, granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone, the variance will not substantially affect the general plan and will not be contrary to the public interest, and the spirit of the land use ordinance is observed and substantial justice done.


Gary Lunt 2nd the motion. Chair asked for a vote: Gary Lunt, Mona Lowe, D.C. Young, Leah Matheson, and Joseph Elison, All Ayes. Chair declared the motion passed unanimously.

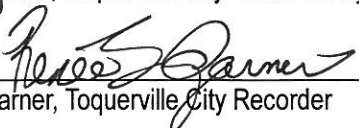
Chair stated that a copy of the minutes after they are approved will serve as notification of findings to inform the Hawleys of the ruling.

**ADJOURNMENT:** Chair called for a motion to adjourn the meeting.

Motion by DC Young to adjourn the meeting was second by Gary Lunt.

Note: Heath advised the applicant that only one dwelling is allowed in the zoning, that it would be up to Staff to issue a building permit and that it may be a condition of the permit to alter the garage so that it would no longer be considered a residence.

  
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Joseph Elison, Toquerville City Board of Adjustments Chair

  
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Renee Garner, Toquerville City Recorder



(Note: the minutes were approved via email and/or office visit by Joseph Elison, Gary Lunt, D.C. Young, Mona Lowe, and Leah Matheson by 2-2-2015)